

## ***REMARKS***

Claims 1, 3-13, 21 and 24-26 are pending in the application. Claims 4 and 6 are presently withdrawn from consideration as drawn to non-elected species.

### ***Specification***

The withdrawal of the specification objection in view of the amendment is gratefully acknowledged.

### ***Claim rejections under 35 U.S.C. §103***

The prior art rejections of record stand: Claims 1, 3, 9 and 21 were rejected under 35 U.S.C. §103(a) as being unpatentable over JP 55-081471 A (JP ‘471) in view of either commonly assigned U.S. Patent 6,413,285 to Chu (Chu) or JP 62-243247 (JP ‘247). Claims 2, 7 and 10-12 were rejected under 35 U.S.C. §103(a) as being unpatentable over JP ‘471 in view of Chu or JP ‘247 as applied to claim 1, and further in view of US 5,314,765 to Bates (Bates ‘765). Claim 5 was rejected under 35 U.S.C. §103(a) as being unpatentable over JP ‘471 in view of Chu or JP ‘247 as applied to claim 1, and further in view of US 3,976,509 to Tsai (Tsai). Claim 8 was rejected under 35 U.S.C. §103(a) as being unpatentable over JP ‘471 in view of Chu or JP ‘247 as applied to claim 1, and further in view of US 6,025,094 to Visco et al. (Visco ‘094). Claim 13 was rejected under 35 U.S.C. §103(a) as being unpatentable over JP ‘471 in view of Chu or JP ‘247 and Bates as applied to claim 12, and further in view of US 6,485,622 to Fu (Fu).

In addition, new claims 24-26 were rejected under 35 U.S.C. §103(a) as being unpatentable over JP ‘471 in view of Chu or JP ‘247 as applied to claim 1, and further in view of US 7,282,296 to Visco (Visco ‘296). However, it is respectfully submitted that the Visco ‘296 reference is unavailable as a reference in the 35 U.S.C. 103(a) rejection of claims 24-26 because it was commonly owned by the assignee of the present application, PolyPlus Battery Company, at the time the claimed invention was made. MPEP 706.02(l)(1) and 35 U.S.C 103(c) recite that “Subject matter developed by another person, which qualifies as prior art only under one or more of subsections (e), (f), and (g) of section 102 of this title, shall not preclude patentability under this section where the subject matter and the claimed invention were, at the time the claimed invention was made owned by the same person or subject to an obligation of assignment to the same person.”

Accordingly, at least for these reasons, the Applicants respectfully request the withdrawal of the section 103(a) rejection of claims 24-26. Further, since the withdrawal of this rejection would render claims 24-26 free of prior art based rejections, in an effort to expedite the prosecution of the aspects of the present invention recited in claims 24-26, claim 1 has been amended to

incorporate the limitations of those claims. Corresponding adjustments have been made to the other dependent claims by amendment or cancelation, without prejudice.

### *Double Patenting*

Claims 1-3, 5, 7-13 and 21 remain provisionally rejected on the ground of obviousness-type double patenting over claims of commonly assigned co-pending application 10/772,157 of Visco et al. (Visco '157) in view of Chu or JP '247. In addition, added claims 24-26 were provisionally rejected on the ground of obviousness-type double patenting over claims of commonly assigned co-pending application 10/772,157 of Visco et al. (Visco '157) as applied to claims 1 and 2 above and further in view of Visco '296 and US 7,282,302 to Visco (Visco '302).

In order to expedite prosecution of the claims as amended, a Terminal Disclaimer accompanies this response in order to obviate the obviousness-type double patenting issues with regard to prior claims 24-26.

### *Withdrawn Claims*

To the extent that claims previously withdrawn can be rejoined with the claims under consideration based on the subject matter indicated allowable, such rejoinder is respectfully requested. Otherwise, if the pendency of withdrawn claims is the only remaining impediment to allowance of the application, authorization is given to cancel the withdrawn claims, without prejudice.

### *Conclusion*

Applicants believe that all pending claims are allowable and respectfully request a Notice of Allowance for this application from the Examiner. Should the Examiner believe that a telephone conference would expedite the prosecution of this application, the undersigned can be reached at the telephone number set out below. If any additional fees are due in connection with the filing of this amendment, the Commissioner is authorized to charge such fees to Deposit Account 504480 (Order No. PLUSP038).

Respectfully submitted,  
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